



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

November 3, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Irene Desmarteau v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 278 107

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$425,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosures

MEMORANDUM

October 17, 2003

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JOHANNA M. FONTENOT
Principal Deputy County Counsel
General Litigation Division

NOHEMI GUTIERREZ FERGUSON
Gutierrez, Preciado & House LLP

RE: Irene Desmarteau v. County of Los Angeles, et al.
Los Angeles Superior Court Case No. BC 278107

DATE OF
INCIDENT: April 2001 - October 2001

AUTHORITY
REQUESTED: \$425,000

COUNTY
DEPARTMENT: SHERIFF'S DEPARTMENT

CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval

ROCKY A. ARMFIELD Chief Administrative Office

LLOYD W. PELLMAN County Counsel

MARIA M. OMS Auditor-Controller

on _____, 2003

SUMMARY

This is a recommendation to settle for \$425,000, a lawsuit filed by Irene Desmarteau, who alleges she was sexually harassed by her supervisor while employed with the Sheriff's Department.

LEGAL PRINCIPLES

Under the Fair Employment and Housing Act (FEHA), an employer is liable for the acts of its supervisors, when the supervisor sexually harasses another employee. The FEHA also imposes liability on an individual employee for committing sexual harassment on another person in the workplace.

When an employee prevails in a lawsuit brought under FEHA, the employee is entitled to an award of attorney's fees.

SUMMARY OF FACTS

Irene Desmarteau is a Sheriff's Deputy employed by the Los Angeles County Sheriff's Department since 1989. She alleges that she was sexually harassed by her supervisor from April 2001 to October 2001 while assigned to the Training Bureau.

Irene Desmarteau alleges that her supervisor demanded sexual favors in exchange for a promotion and other employment benefits. According to Irene Desmarteau, the supervisor would invite her to dinner, lunch, and meetings at hotels under the guise of discussing work, but then the conversation and his conduct would change to him wanting sexual favors.

Irene Desmarteau alleges that she acquiesced to the supervisor's demand for sexual favors because she was physically afraid of the supervisor, and because she believed that her career would be adversely affected if she were to reject his advances.

In February 2002, Irene Desmarteau reported to the Sheriff's Department that her supervisor had sexually harassed her. The complaint was immediately investigated by the Internal Affairs Bureau. Irene Desmarteau went off work on April 12, 2002 due to emotional distress, and has not returned to work.

The supervisor, who is no longer employed by the Sheriff's Department, denies any wrongdoing.

DAMAGES

Irene Desmarteau alleges that she experienced depression, anxiety, post-traumatic stress disorder (PTSD), and other psychosomatic stress as a result of the sexual harassment.

Irene Desmarteau was placed on stress leave on April 12, 2002, due to emotional distress, and has not returned to work. Irene Desmarteau has been receiving psychological treatment. Irene Desmarteau's doctors allege she will not be able to return to work due to the emotional distress she experienced while working at the Sheriff's Department. She recently applied for disability retirement, and her application is pending.

Should this matter proceed to trial we estimate the potential damages could be as follows:

Future loss of earnings	\$1,100,000
Emotional distress	\$ 500,000
Attorney's fees	\$ <u>600,000</u>
Total	\$2,200,000

STATUS OF CASE

The Court has continued the trial date to December 1, 2003, in order to provide the opportunity to present this settlement recommendation.

The County retained separate legal counsel to represent the supervisor. The total expenses incurred in defense of this matter are attorney's fees of \$299,303 and \$41,335 in costs.

EVALUATION

This is a case of potential liability. Sexual harassment cases often turn on difficult questions of witness credibility.

The FEHA provides that an employer is strictly liable for the acts of its supervisors when the supervisor sexually harasses another employee.

In light of the principles of strict liability for supervisor harassment, this case presents the County with significant exposure. Although the supervisor denies any wrongdoing, a jury could conclude that Irene Desmarteau's post traumatic stress disorder was caused by sexual harassment as the result of the supervisor's conduct, and the jury award could far exceed the recommended

settlement. In addition, if Irene Desmsarteau prevails at trial, she would be entitled to an award of attorney's fees under FEHA.

We join our private counsel, Gutierrez, Preciado & House LLP, in recommending a settlement of this matter in the amount of \$425,000. The Sheriff's Department joins in the recommended settlement.

APPROVED:



Gary N. Miller
Assistant County Counsel

JMF:bn

Los Angeles County Sheriff's Department

CORRECTIVE ACTION PLAN

LAWSUIT OF: Irene Desmarteau v. County of Los Angeles
Court Case No.: BC 278107

INCIDENT DATE: October, 2001

INCIDENT LOCATION: S.T.A.R.S Center, Whittier

RISK ISSUES: Under the Fair Employment and Housing Act (FEHA), an employer is strictly liable for the acts of its employees when a supervisor sexually harasses a subordinate employee. The FEHA also imposes liability on an individual employee for committing sexual harassment on another person in the workplace. When an employee prevails in a lawsuit brought under FEHA, the employee is entitled to an award of attorneys' fees.

INVESTIGATIVE REVIEW: At the time of the incident, the plaintiff, a Deputy Sheriff, was assigned to the Training Bureau. She alleged that her supervisor used his rank and position to demand sexual favors in exchange for a promotion and other perks. The plaintiff claims that she acquiesced to the supervisor and provided him with sexual favors because she was afraid of the supervisor and because she believed that her career would be adversely effected if she rejected his advances. The plaintiff's complaint was investigated by the Internal Affairs Bureau.

TRAINING ISSUES: Training issues identified in this matter have been addressed through the implementation of the Department's Policy of Equality.

POLICY ISSUES: At the time of this incident it was, and still remains, the policy of the Sheriff's Department that harassment, discrimination, and retaliation of employees will not be tolerated.

CORRECTIVE ACTION: Effective January 5, 2003, the Department implemented the "Policy of Equality" which included Department wide training on the issues of gender based harassment, discrimination, and retaliation. The Policy of Equality has been incorporated into the Department's Manual of Policy and Procedures, and supercedes previous policies governing harassment, discrimination, and retaliation.

The employee accused of harassment is no longer employed by the Sheriff's Department.

Fanny P. Waldie, Asst. Sheriff